

By: Representative Ellington

To: Public Health and  
Welfare

## HOUSE BILL NO. 937

1 AN ACT TO REENACT AND AMEND SECTION 41-67-1, MISSISSIPPI CODE  
2 OF 1972, TO DEFINE THE PURPOSE OF THE "MISSISSIPPI INDIVIDUAL  
3 ON-SITE WASTEWATER DISPOSAL SYSTEM LAW"; TO REENACT AND AMEND  
4 SECTION 41-67-2, MISSISSIPPI CODE OF 1972, TO REDEFINE TERMS; TO  
5 REENACT AND AMEND SECTION 41-67-3, MISSISSIPPI CODE OF 1972, TO  
6 PROVIDE FOR STATE DEPARTMENT OF HEALTH INSPECTION AND APPROVAL OF  
7 ALL NEW ON-SITE SYSTEM INSTALLATIONS BEFORE FINAL UTILITY  
8 CONNECTION, TO REQUIRE ENGINEERS TO SUBMIT ALL PLANS FOR SYSTEMS  
9 THEY WILL INSTALL FOR REVIEW BY THE DEPARTMENT AND TO ATTEND  
10 CERTAIN TRAINING COURSES AND TO REQUIRE REGISTRATION OF  
11 MANUFACTURERS OF ALTERNATIVE WASTEWATER TECHNOLOGY; TO REENACT AND  
12 AMEND SECTION 41-67-5, MISSISSIPPI CODE OF 1972, TO PROVIDE  
13 STANDARDS FOR THE INSTALLATION OF INDIVIDUAL ON-SITE WASTEWATER  
14 DISPOSAL SYSTEMS WITH AND WITHOUT CENTRAL SEWERAGE SYSTEM  
15 AVAILABILITY AND TO PROVIDE PROCEDURES FOR CONSTRUCTION PERMITS  
16 WITH INFORMATION AND APPROVAL OF PROPER WASTEWATER DISPOSAL  
17 SYSTEMS, AND TO PROVIDE REQUIREMENTS FOR A CENTRALIZED SEWERAGE  
18 SYSTEM FOR SUBDIVISION DEVELOPMENT; TO REENACT AND AMEND SECTION  
19 41-67-9, MISSISSIPPI CODE OF 1972, TO DEFINE THE RESPONSIBILITY OF  
20 PROPERTY OWNERS TO REPAIR EXISTING MALFUNCTIONING INDIVIDUAL  
21 ON-SITE WASTEWATER DISPOSAL SYSTEMS; TO REENACT AND AMEND SECTION  
22 41-67-10, MISSISSIPPI CODE OF 1972, TO CLARIFY ACCREDITATION  
23 REQUIREMENTS FOR AEROBIC TREATMENT SYSTEM CERTIFYING PROGRAMS; TO  
24 REENACT AND AMEND SECTION 41-67-11, MISSISSIPPI CODE OF 1972, TO  
25 PROVIDE REQUIREMENTS FOR TEMPORARY DISPOSAL SYSTEMS; TO REENACT  
26 AND AMEND SECTION 41-67-12, MISSISSIPPI CODE OF 1972, TO INCREASE  
27 THE INSTALLER ANNUAL CERTIFICATION FEE AND ADD A FEE FOR  
28 DEPARTMENT REVIEW OF PROPOSED SUBDIVISIONS AND REVIEW OF ENGINEER  
29 PLANS; TO REENACT AND AMEND SECTION 41-67-15, MISSISSIPPI CODE OF  
30 1972, TO AUTHORIZE DECENTRALIZED ON-SITE WASTEWATER MANAGEMENT  
31 DISTRICTS TO MAKE RULES; TO REENACT AND AMEND SECTIONS 41-67-25  
32 AND 41-67-27, MISSISSIPPI CODE OF 1972, AND CODIFY NEW SECTION  
33 41-67-26, MISSISSIPPI CODE OF 1972, TO REQUIRE REGISTRATION OF  
34 MANUFACTURERS OF ALTERNATIVE TREATMENT OR DISPOSAL COMPONENTS AND  
35 TO PROVIDE STANDARDS FOR THE CERTIFICATION OF MAINTENANCE  
36 PROVIDERS AND PERSONS ENGAGED IN REMOVING AND DISPOSING SLUDGE AND  
37 SEPTAGE; TO REENACT AND AMEND SECTION 41-67-28, MISSISSIPPI CODE  
38 OF 1972, TO REQUIRE THE DEPARTMENT TO PROVIDE A PROPERTY OWNER  
39 WITH A MALFUNCTIONING SYSTEM A LIST OF REPAIR OR REPLACEMENT  
40 OPTIONS, TO AUTHORIZE THE DEPARTMENT TO FILE CRIMINAL CHARGES OR  
41 TO SEEK MANDATORY OR PROHIBITORY INJUNCTIVE RELIEF TO ENFORCE THIS  
42 ACT AND ANY ORDER ISSUED UNDER THIS ACT; TO REENACT SECTIONS  
43 41-67-19, 41-67-23 AND 41-67-29, MISSISSIPPI CODE OF 1972; TO  
44 REPEAL SECTIONS 41-67-4, 41-67-6, 41-67-7, 41-67-8, 41-67-16 AND  
45 41-67-21, MISSISSIPPI CODE OF 1972, WHICH PRESCRIBE CERTAIN DUTIES  
46 OF THE DEPARTMENT OF HEALTH RELATIVE TO INDIVIDUAL ON-SITE  
47 WASTEWATER SYSTEM REGULATIONS, PROVIDE CERTAIN PENALTIES FOR  
48 NONCOMPLIANCE, PROVIDE THE DETERMINATION OF APPLICABILITY OF THIS  
49 ACT, REQUIRE A STUDY OF ON-SITE WASTEWATER SYSTEMS AND PROVIDE FOR  
50 OWNER REPAIR OF MALFUNCTIONING SYSTEMS; TO AMEND SECTION 41-67-31,  
51 MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE



52 MISSISSIPPI INDIVIDUAL ON-SITE WASTEWATER DISPOSAL SYSTEM LAW; AND  
53 FOR RELATED PURPOSES.

54 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

55 **SECTION 1.** Section 41-67-1, Mississippi Code of 1972, is  
56 reenacted and amended as follows:

57 41-67-1. (1) This chapter shall be known and may be cited  
58 as the "Mississippi Individual On-Site Wastewater Disposal System  
59 Law."

60 (2) It is the purpose of the Legislature through this  
61 chapter to protect human health and the environment while  
62 providing for reasonable use of individual on-site wastewater  
63 disposal systems. The Legislature finds that continued  
64 installation and operation of individual on-site wastewater  
65 disposal systems in a faulty or improper manner, in a manner that  
66 lacks essential maintenance for the system, or in areas where  
67 unsuitable soil and population density adversely affect the  
68 efficiency and functioning of these systems, has a detrimental  
69 effect on the public health and welfare and the environment  
70 through contamination of land, groundwater and surface waters.  
71 Therefore, the Legislature expresses a general preference for the  
72 installation and operation of centralized sewerage systems in  
73 Mississippi, where feasible. The Legislature recognizes, however,  
74 that individual on-site wastewater treatment and disposal systems  
75 help meet the needs of the state's citizens, especially in rural  
76 locations, and can be rendered ecologically safe and protective of  
77 the public health if the systems are designed, installed,  
78 constructed, maintained and operated properly. It is the intent  
79 of the Legislature to allow the continued installation, use and  
80 maintenance of individual on-site wastewater disposal systems in a  
81 manner that will not jeopardize public health and welfare or the  
82 environment.

83 **SECTION 2.** Section 41-67-2, Mississippi Code of 1972, is  
84 reenacted and amended as follows:



85           41-67-2. For purposes of this chapter, the following words  
86 shall have the meanings ascribed herein unless the context clearly  
87 indicates otherwise:

88           (a) "Alternative system" means any on-site sewage  
89 treatment and disposal system used in lieu of, including  
90 modifications to, a standard aggregate subsurface system.

91           (b) "Board" means the Mississippi State Board of  
92 Health.

93           (c) "Centralized sewerage system" means pipelines or  
94 conduits, pumping stations, force mains, and all other  
95 construction, devices and appliances appurtenant thereto, used for  
96 the collection and conveyance of sewage to a treatment works or  
97 point of ultimate disposal other than an individual on-site  
98 wastewater disposal system or cluster system.

99           (d) "Certified maintenance provider" means any person  
100 or business entity that holds a written certification issued by  
101 the department allowing the person to provide maintenance services  
102 associated with approved on-site wastewater treatment and disposal  
103 systems.

104           (e) "Cluster system" means an on-site sewage  
105 collection, treatment and disposal system designed to serve two  
106 (2) or more sewage-generating units on separate legal tracts.

107           (f) "Commission" means the Commission on Environmental  
108 Quality.

109           (g) "Conventional system" means an individual on-site  
110 wastewater disposal system consisting of a septic tank and  
111 gravity-fed subsurface aggregate disposal field.

112           (h) "Decentralized wastewater management" means a  
113 system by which public or private entity undertakes the  
114 centralized management and monitoring of that individual on-site  
115 wastewater disposal system or systems or cluster wastewater  
116 systems that service more than one (1) generator or individual  
117 family housing unit, including, but not limited to, planning,



118 construction, operation, maintenance and financing programs  
119 concerning those systems to be managed.

120 (i) "Department" means the Mississippi State Department  
121 of Health.

122 (j) "Generator" means any person whose act or process  
123 produces sewage or other material suitable for disposal in an  
124 individual on-site wastewater disposal system.

125 (k) "Individual on-site wastewater disposal system"  
126 means a sewage treatment and effluent disposal system, including,  
127 but not limited to, a septic tank and underground absorption  
128 system, that does not discharge into waters of the state, that  
129 accepts only human sanitary waste and similar waste streams, and  
130 that does not require a permit issued by the Mississippi  
131 Environmental Quality Permit Board.

132 (l) "Installer" means any person engaging in the  
133 practice of constructing, installing or repairing any portion of  
134 an individual on-site wastewater disposal system.

135 (m) "Managed decentralized sewerage system" means an  
136 individual on-site wastewater disposal system or cluster  
137 wastewater system or systems, under management of a decentralized  
138 management entity, that is or are used to treat and dispose of  
139 relatively small volumes of wastewater, generally from dwellings  
140 and businesses.

141 (n) "Performance-based system" means a system designed  
142 to meet standards established to designate a level of treatment of  
143 wastewater that an individual on-site wastewater disposal system  
144 must meet, including, but not limited to, biochemical oxygen  
145 demand, total suspended solids, nutrient reduction and fecal  
146 coliform.

147 (o) "Person" means any individual, trust, firm, joint  
148 stock company, public or private corporation (including a  
149 government corporation), partnership, association, state, or any  
150 agency or institution thereof, municipality, commission, political



151 subdivision of a state or any interstate body, and includes any  
152 officer or governing or managing body of any municipality,  
153 political subdivision, or the United States, or any officer or  
154 employee thereof.

155       (p) "Professional engineer" means any person who has  
156 met the qualifications required under Section 73-13-23(1) and who  
157 has been issued a certificate of registration as a professional  
158 engineer in the State of Mississippi.

159       (q) "Property of the generator" means land owned by or  
160 under permanent legal easement or lease to the generator.

161       (r) "Registered system" means any alternative  
162 wastewater treatment and/or disposal system approved after July 1,  
163 1992.

164       (s) "Subdivision" means any tract or combination of  
165 adjacent tracts of land that is subdivided into five (5) or  
166 more \* \* \* tracts, sites or parcels for the purpose of commercial  
167 or residential development.

168       **SECTION 3.** Section 41-67-3, Mississippi Code of 1972, is  
169 reenacted and amended as follows:

170       41-67-3. (1) The State Board of Health shall have the  
171 following duties and responsibilities:

172       (a) To exercise general supervision over the design,  
173 construction, operation and maintenance of individual on-site  
174 wastewater disposal systems with waste stream characteristics  
175 similar to residential strength \* \* \*. To effectively administer  
176 this law, the department and the Department of Environmental  
177 Quality shall enter into a memorandum of understanding, which at a  
178 minimum shall clearly define the jurisdiction of each department  
179 with regard to wastewater disposal and procedures for  
180 interdepartmental interaction and cooperation;

181       (b) To adopt, modify, repeal and promulgate rules and  
182 regulations, after due notice and hearing, and where not otherwise  
183 prohibited by federal or state law, to make exceptions to, to



184 grant exemptions from and to enforce rules and regulations  
185 implementing or effectuating the duties of the board under this  
186 chapter to protect the public health. The board may grant  
187 variances from rules and regulations adopted under this chapter,  
188 including requirements for buffer zones, or from setbacks required  
189 under Section 41-67-7 where the granting of a variance shall not  
190 subject the public to unreasonable health risks or jeopardize  
191 environmental resources;

192 (c) To provide or deny certification or registration  
193 for persons engaging in the business of the design, manufacture,  
194 construction or installation of individual on-site wastewater  
195 disposal systems and persons engaging in the removal and disposal  
196 of the sludge and liquid waste from those systems;

197 (d) To suspend or revoke certifications or registration  
198 issued to persons engaging in the business of the design,  
199 manufacture, construction or installation of individual on-site  
200 wastewater disposal systems or persons engaging in the removal and  
201 disposal of the sludge and liquid waste from those systems, when  
202 it is determined the person has violated this chapter or  
203 applicable rules and regulations; \* \* \*

204 (e) To require the submission of information deemed  
205 necessary by the department to determine the suitability of  
206 individual lots for individual on-site wastewater disposal  
207 systems; and

208 (f) To approve or disapprove the construction of  
209 individual on-site wastewater disposal systems based on  
210 appropriate procedures specified in regulations to determine the  
211 suitability of individual lots for individual on-site wastewater  
212 disposal systems and to enforce violations of the board's  
213 regulations.

214 (2) Nothing in this chapter shall preclude a professional  
215 engineer from providing services relating to the design,  
216 construction or installation of an individual on-site wastewater



217 disposal system to comply with this chapter. \* \* \* Professional  
218 engineers engaging in the design, construction or installation of  
219 individual on-site wastewater disposal systems shall not require  
220 certification under this chapter.

221 (3) To assure the effective and efficient administration of  
222 this chapter, the board shall adopt rules governing the design,  
223 construction or installation, operation and maintenance of  
224 individual on-site wastewater disposal systems, including rules  
225 concerning the:

226 (a) Review and approval of individual on-site  
227 wastewater disposal systems \* \* \*;

228 (b) Certification of installers of individual on-site  
229 wastewater disposal systems and persons engaging in the removal  
230 and disposal of the sludge and liquid waste from those systems;  
231 and

232 (c) Registration and requirements for testing and  
233 listing of manufacturers of aerobic treatment systems.

234 (4) In addition, the board shall adopt rules establishing  
235 performance standards for individual on-site wastewater disposal  
236 systems for single family residential generators and rules  
237 concerning the operation and maintenance of individual on-site  
238 wastewater disposal systems designed to meet those standards. Any  
239 system proposed for authorization in accordance with performance  
240 standards must be designed and certified by a professional  
241 engineer and must be authorized by the department before  
242 installation. The performance standards shall be consistent with  
243 the federal Clean Water Act, maintaining the wastes on the  
244 property of the generator \* \* \* and protection of the public  
245 health. Rules for the operation and maintenance of individual  
246 on-site wastewater disposal systems designed to meet performance  
247 standards shall include rules concerning the following:

248 (a) A standard application form and requirements for  
249 supporting documentation;



- 250 (b) Application review;
- 251 (c) Approval or denial of authorization for proposed  
252 systems;
- 253 (d) Requirements, as deemed appropriate by the board,  
254 for annual renewal of authorization;
- 255 (e) Enforcement of the requirements and conditions of  
256 authorization; and
- 257 (f) Inspection, monitoring, sampling and reporting on  
258 the performance of the system.

259 (5) \* \* \* Appeals from a final decision of the board  
260 regarding the authorization of an individual on-site wastewater  
261 disposal system based upon performance standards shall be taken  
262 using a procedure substantially equivalent to the procedure  
263 specified for hospital licenses in Chapter 9 of Title 41.

264 \* \* \*

265 (6) All regulations shall \* \* \* take into consideration and  
266 make provision for different types of soil in the state when  
267 performing soil and site evaluations.

268 **SECTION 4.** Section 41-67-5, Mississippi Code of 1972, is  
269 reenacted and amended as follows:

270 41-67-5. (1) No individual on-site wastewater disposal  
271 system shall be constructed or installed unless the system is  
272 designed, installed or constructed, and will operate so as to keep  
273 all wastewater produced by the system on the residential or  
274 business property that the system serves. In order to demonstrate  
275 compliance with this section, a system must be designed to:

276 (a) Maintain all treated wastewater on the property of  
277 the generator or responsible entity to be served by the system;

278 (b) Be installed only in an area where the soil type,  
279 design of the system, and location and concentration of any other  
280 systems in the same area will allow adequate treatment of all  
281 wastewater processed by the system;





282 (c) Not allow or cause the direct discharge of  
283 wastewater to surface water or to underground sources of drinking  
284 water or cause the leaching or seepage of wastewater into surface  
285 water or into underground sources of drinking water in a manner,  
286 speed or amount that would detrimentally affect the source of  
287 surface water or groundwater; and

288 (d) Process only sanitary wastewater, whether  
289 originating from residences or businesses. No individual on-site  
290 wastewater disposal system shall be approved for the disposal of a  
291 waste stream that includes waste other than sanitary wastewater.

292 (2) No individual on-site wastewater disposal system shall  
293 be installed in an area where a central sewerage system is  
294 available for use and where connection to the central sewerage  
295 system is feasible. In determining whether a central sewerage  
296 system is available and feasible, the department shall consider,  
297 at a minimum, the following:

298 (a) As to availability, whether the central system  
299 includes the available capacity to accept the waste that would  
300 otherwise be treated by an individual on-site wastewater disposal  
301 system and will agree to accept that waste at a cost similar to  
302 the cost borne by other users of the same central system;

303 (b) As to feasibility, whether a connection can be  
304 established from the land where an individual on-site septic  
305 system otherwise would be established to the appropriate point of  
306 connection to an existing central system, or a new central system  
307 can be built due to the location and concentration of the site or  
308 sites in question, without requiring unreasonable costs to be  
309 borne by the property owner in comparison to the cost of  
310 installing and maintaining (including, when probable, the eventual  
311 like-kind replacement of) an individual on-site wastewater  
312 disposal system. For purposes of this subsection, "unreasonable  
313 costs" shall mean costs that bear no reasonable relationship to  
314 the pollution control benefits derived from the connection and to



315 any expected benefit to the current or future property value of  
316 the property in question due to the connection (as compared to the  
317 property's value if an individual on-site wastewater disposal  
318 system was installed).

319 (3) The following process is required before any  
320 construction or placement of any mobile, modular or permanently  
321 constructed residence, building or facility that may require the  
322 installation of an individual on-site wastewater disposal system:

323 (a) Any person, before the onset of construction of a  
324 mobile homesite or pad, a modular homesite, or a permanently  
325 constructed residence, building or facility, that may require the  
326 installation of an individual on-site wastewater disposal system,  
327 shall obtain an individual on-site wastewater disposal system  
328 construction permit or similar approval from the department. In  
329 order to apply for a construction permit, an individual shall  
330 provide the department with a legal description of the homesite, a  
331 plot plan and any additional documentation required by the  
332 department.

333 (b) Within five (5) working days following receipt of a  
334 complete application for a construction permit, the department  
335 shall make a site evaluation, except in cases where a professional  
336 engineer provides services relating to the design, construction or  
337 installation of an individual on-site wastewater disposal system  
338 to comply with this chapter. Within ten (10) additional working  
339 days, the department shall provide the applicant with complete  
340 information on all individual on-site wastewater disposal systems  
341 that the site can support, unless there are conditions requiring  
342 further investigation that are revealed in the initial evaluation.  
343 In providing available options concerning individual on-site  
344 wastewater disposal systems suitable for installation on a lot or  
345 tract, personnel of the department shall use best professional  
346 judgment based on rules and regulations adopted by the board.  
347 These time requirements do not apply to subdivision developments.



348           (c) (i) The installer shall notify the department at  
349 least forty-eight (48) hours before beginning construction of an  
350 individual on-site wastewater disposal system and, at that time,  
351 schedule a time for inspection of the system with the appropriate  
352 county department of health.

353           (ii) An installer shall not cover his work with  
354 soil or other surface material unless one (1) of the following has  
355 occurred:

356                   1. The installer has received authorization  
357 to cover the system after an inspection by a county department of  
358 health inspector; or

359                   2. The county department of health inspector  
360 has not rescheduled the appointment and is unable to keep the  
361 system inspection appointment, and the installer has waited at  
362 least thirty (30) minutes after the scheduled inspection time. In  
363 this case, an installer that has obtained prior department  
364 authorization may cover his work, and the department shall issue  
365 its final approval based on the information provided under  
366 paragraph (e).

367           (d) For lots, tracts, sites or parcels where the  
368 department does not recommend a system due to physical limitations  
369 of the site and the provisions of this chapter, a person may  
370 retain a registered professional engineer for design, construction  
371 or installation of a system. If a professional engineer designs,  
372 constructs or installs or directly supervises the construction or  
373 installation of a design-based individual on-site wastewater  
374 disposal system consistent with this chapter, the professional  
375 engineer shall notify the department in writing of those services  
376 being provided and provide to the department appropriate  
377 documentation relating to that particular installation with that  
378 professional engineer's seal. If that system is contemplated, the  
379 engineer shall submit the necessary documentation to the  
380 department in order to apply for a construction permit. This



381 information shall be stamped with that professional engineer's  
382 seal. The department shall review the application information and  
383 either issue or deny the construction permit. No individual  
384 on-site wastewater disposal system shall be installed at a site  
385 where the department does not initially recommend the installation  
386 of an individual on-site wastewater disposal system until and  
387 unless a construction permit based on the application and  
388 engineering plans is issued by the department.

389 (e) After construction or installation of the  
390 individual on-site wastewater disposal system, the property owner  
391 or his agent shall provide a Final Approval Request containing the  
392 following to the department:

393 (i) A signed affidavit from the installer or  
394 engineer and any additional required documentation that the system  
395 was installed in compliance with all requirements, regulations and  
396 permit conditions applicable to the system installed; and

397 (ii) For any system that contains an electric  
398 operational component, a continuing maintenance contract signed by  
399 the property owner and a certified maintenance provider.

400 (f) Upon receipt and approval of the Final Approval  
401 Request, the department shall supply to the applicant a document  
402 demonstrating the department's final approval of the installation  
403 of the system.

404 (4) No new permanent utility connection shall be provided to  
405 any mobile, modular or permanently constructed residence, building  
406 or facility connected to or intending to use an individual on-site  
407 wastewater disposal system unless the applicant for a connection  
408 shows proof of the department's final approval of installation as  
409 required by this section.

410 (5) (a) A centralized sewerage system must be provided for  
411 any subdivision development. No individual on-site wastewater  
412 disposal system shall be approved for installation at a site that



413 is within or part of a subdivision unless specifically authorized  
414 under subsection (5) (b).

415 (b) The installation of an individual on-site  
416 wastewater disposal system may be approved for a site that is  
417 within or part of a subdivision if the department determines that:

418 (i) The individual on-site wastewater disposal  
419 system proposed can meet all requirements of subsections (1) and  
420 (2) of this section; and

421 (ii) The developer certifies to the department  
422 that it has committed to the installation and operation of a  
423 decentralized management system. The department may waive the  
424 requirement of this subparagraph (ii) if all sites or tracts  
425 within the subdivision are no smaller than five (5) acres.

426 This finding may be made in consultation with the commission  
427 and any relevant local planning authorities. Any subdivision  
428 designed, laid out, platted or partially constructed before July  
429 1, 1988, or for any subdivision that was platted and recorded  
430 during the period from July 1, 1995, through June 30, 1996, is  
431 exempt from this subsection (5).

432 (6) No person shall alter an individual on-site wastewater  
433 disposal system from the design and installation approved by the  
434 department, or in any way that decreases the effectiveness of  
435 wastewater treatment afforded by the system, without first  
436 obtaining the approval of the department.

437 **SECTION 5.** Section 41-67-9, Mississippi Code of 1972, is  
438 reenacted and amended as follows:

439 41-67-9. (1) Existing individual on-site wastewater  
440 disposal systems shall be considered acceptable, provided the  
441 following requirements are met:

442 (a) The lot is located in an area or subdivision where  
443 individual on-site wastewater disposal systems are considered  
444 acceptable under this chapter;



445 (b) The residence, building or facility has previously  
446 been occupied for a period of time deemed by the department  
447 necessary to determine the functioning capability of the  
448 individual on-site wastewater disposal system;

449 (c) At the time of inspection the system exhibits no  
450 evidence that any insufficiently treated effluent is or has been  
451 seeping to the surface of the ground and any discharge of treated  
452 effluent is confined within the boundaries of the property of the  
453 generator \* \* \*; and

454 (d) If a private water supply well is present, the well  
455 is \* \* \* protected from surface contamination and has a concrete  
456 slab of a thickness of at least four (4) inches extending at least  
457 two (2) feet in all directions from the well casing.

458 (2) (a) If an existing \* \* \* individual on-site wastewater  
459 disposal system is malfunctioning, the property owner must repair  
460 the system so that it meets all requirements of this chapter and  
461 of the regulations of the board concerning the installation and  
462 construction of an individual on-site wastewater disposal system.  
463 The department shall provide the property owner a list of  
464 recommendations for repair of the malfunctioning system. Repairs  
465 must be made in consultation with the department to ensure that  
466 the resulting system complies with this chapter and its  
467 implementing regulations. Alternatively, the owner may replace  
468 the system with a system that meets the requirements of this  
469 chapter and the regulations of the board. If repair of the  
470 existing system to meet the standards of this chapter and the  
471 regulations of the board is not possible, the existing system  
472 shall be repaired to reduce the volume of effluent, to adequately  
473 treat the effluent and to the greatest extent possible, to confine  
474 the discharge to the property of the generator or responsible  
475 entity. If repairs are made to significantly upgrade the existing  
476 individual on-site wastewater disposal system, the department may



477 approve the system, if requested, if the system is repaired in a  
478 manner deemed adequate by the department to protect public health.

479 (b) The board or department may order a property owner  
480 or lessee to repair a malfunctioning individual on-site wastewater  
481 disposal system on the owner's or lessees' property within thirty  
482 (30) days. If the malfunctioning system presents an immediate  
483 health hazard, the board or the department may order the system to  
484 be repaired or shut down in less than thirty (30) days. The  
485 department shall provide the property owner a list of  
486 recommendations for repair or replacement of the malfunctioning  
487 system.

488 (3) The department may file an affidavit with the justice  
489 court, or take administrative enforcement action as described in  
490 this chapter, to require the replacement or repair of a system  
491 after providing thirty (30) days' notice to the property owner of  
492 the requirement of replacement or repair. The property owner  
493 shall take adequate measures as soon as practicable to abate an  
494 immediate health hazard, regardless of whether the department  
495 initiates enforcement action.

496 (4) If central sewerage becomes available to a site using an  
497 individual on-site wastewater disposal system and connection to  
498 the system is feasible, under the standards of Section 41-67-5(2),  
499 the property owner must properly abandon the system, as provided  
500 in department regulations, and connect to the central sewerage  
501 system.

502 **SECTION 6.** Section 41-67-10, Mississippi Code of 1972, is  
503 reenacted and amended as follows:

504 41-67-10. Aerobic treatment systems may be installed only if  
505 they have been tested and listed by a third party certifying  
506 program. Aerobic treatment systems shall be in compliance with  
507 standards for a Class I system as defined by the most current  
508 revision of American National Standards Institute/National  
509 Sanitation Foundation (ANSI/NSF) International Standard Number 40,



510 hereby incorporated by reference. \* \* \* An approved third party  
511 certifying program shall accomplish the following \* \* \* for  
512 systems which it has certified to be installed in Mississippi:

513 (a) Demonstrate accreditation by the American National  
514 Standards Institute;

515 (b) Have established procedures which send  
516 representatives to distributors in Mississippi on a recurring  
517 basis to conduct evaluations to assure that distributors of  
518 certified aerobic treatment systems are providing proper  
519 maintenance, have sufficient replacement parts available and are  
520 maintaining service records;

521 (c) Notify the department of the results of monitoring  
522 visits to manufacturers and distributors within sixty (60) days of  
523 the conclusion of the monitoring; and

524 (d) Submit completion reports on testing and any other  
525 information as the department may require for its review.

526 **SECTION 7.** Section 41-67-11, Mississippi Code of 1972, is  
527 reenacted and amended as follows:

528 41-67-11. (1) Temporary individual on-site wastewater  
529 disposal systems may be approved in an area where individual  
530 on-site wastewater disposal systems otherwise would not be  
531 approved because of the availability and/or feasibility of  
532 connection to a centralized sewerage system only after a contract  
533 has been awarded or other definite commitments as are deemed  
534 sufficient to the department are formalized for the construction  
535 of municipal or community sewers that upon completion will  
536 adequately serve the property. Temporary individual on-site  
537 wastewater disposal systems shall only be approved \* \* \* when the  
538 municipal or community sewers shall \* \* \* be completed and  
539 available for use within thirty-six (36) months \* \* \*. The  
540 department may approve the installation of a temporary system  
541 under these circumstances only if the system shall comply with the  
542 requirements of Section 41-67-5(1) and comply with all





543 construction requirements of the board. The temporary system may  
544 be installed only after the developer has signed a written  
545 agreement with the centralized sewer provider stating that the  
546 developer will connect to the centralized sewer system when it  
547 becomes available and the provider of the centralized sewer system  
548 being constructed certifies that the centralized sewer system will  
549 have adequate capacity to accept the sewage to be produced by the  
550 temporary systems. The developer shall install an internal sewage  
551 collection system from each lot to the connection point to the  
552 central sewer system as he develops the curbs, gutters and streets  
553 of the subdivision. Upon completion of the sewer construction all  
554 systems shall be abandoned and all residences, buildings or  
555 facilities connected to the sewer.

556 \* \* \*

557 (2) The board may approve the installation of sewage holding  
558 tanks in districts created under Sections 19-5-151 through  
559 19-5-207 for the purpose of providing sewage services. The  
560 district shall be required to maintain or provide for the  
561 maintenance of those holding tanks. The board shall require that  
562 residences be connected to a municipal or community sewage system  
563 when that system is available \* \* \*.

564 **SECTION 8.** Section 41-67-12, Mississippi Code of 1972, is  
565 reenacted and amended as follows:

566 41-67-12. (1) The department shall assess fees in the  
567 following amounts for the following purposes:

568 (a) A fee of Seventy-five Dollars (\$75.00) shall be  
569 levied for a construction permit or inspection of an existing  
570 individual on-site wastewater disposal system. This fee may be  
571 waived by the department of the inspection of an existing system  
572 for which a continuing maintenance contract exists.

573 (b) A fee of One Hundred Dollars (\$100.00) shall be  
574 levied annually for the certification of installers and persons



575 engaging in the removal and disposal of the sludge and liquid  
576 wastes from individual on-site wastewater disposal systems.

577 (c) A fee of Two Hundred Dollars (\$200.00) for each  
578 product registered shall be levied annually for the registration  
579 of manufacturers.

580 (d) A fee of Fifty Dollars (\$50.00) shall be levied  
581 annually for the certification of maintenance providers engaging  
582 in providing continuing maintenance of individual on-site  
583 wastewater disposal systems; however, persons holding a certified  
584 installer's certification or a pumper's license will be exempt  
585 from this fee.

586 (2) In the discretion of the board, a person shall be liable  
587 for a penalty equal to one and one-half (1-1/2) times the amount  
588 of the fee due and payable for failure to pay the fee on or before  
589 the date due, plus any amount necessary to reimburse the cost of  
590 collection.

591 (3) The fee authorized under this section shall not be  
592 assessed for any system operated by state agencies or  
593 institutions, including without limitation, foster homes licensed  
594 by the State Department of Human Services. The fee authorized  
595 under this section shall not be charged again after payment of the  
596 initial fee for any system that has been installed in accordance  
597 with this chapter, within a period of twenty-four (24) months  
598 following the date that the system was originally installed, or  
599 for any system with a documented continuing maintenance agreement.

600 **SECTION 9.** Section 41-67-15, Mississippi Code of 1972, is  
601 reenacted and amended as follows:

602 41-67-15. Nothing in this chapter shall limit the authority  
603 of a municipality, board of supervisors, or decentralized  
604 wastewater management utility district to adopt similar ordinances  
605 which may be, in whole or in part, more restrictive than this  
606 chapter, and in those cases the more restrictive ordinances will  
607 govern.



608           **SECTION 10.** Section 41-67-19, Mississippi Code of 1972, is  
609 reenacted as follows:

610           41-67-19. Each authorized agent of the department  
611 implementing this chapter shall demonstrate to the department's  
612 satisfaction that the person:

613                   (a) Is competent to review and provide any requested  
614 approval of design, construction and installation of individual  
615 on-site wastewater disposal systems, as well as the operation,  
616 repair or maintenance of those systems, to make soil permeability  
617 tests or soil and site evaluations, and to conduct inspections of  
618 individual on-site wastewater disposal systems in accordance with  
619 this chapter and rules and regulations adopted under this chapter;  
620 and

621                   (b) Has successfully completed the installer  
622 certification training program provided by the department.

623           **SECTION 11.** Section 41-67-23, Mississippi Code of 1972, is  
624 reenacted as follows:

625           41-67-23. The department or its authorized representative  
626 may enter onto property and make inspections of any individual  
627 on-site wastewater disposal system as necessary to ensure that the  
628 system is in compliance with this chapter and the rules adopted  
629 under this chapter. The department shall give reasonable notice  
630 to any property owner, lessee or occupant prior to entry onto the  
631 property. The owner, lessee, owner's representative, or occupant  
632 of the property on which the system is located shall give the  
633 department or its authorized representative reasonable access to  
634 the property at reasonable times to make necessary inspections.

635           **SECTION 12.** Section 41-67-25, Mississippi Code of 1972, is  
636 reenacted and amended as follows:

637           41-67-25. (1) A person may not operate as an installer of  
638 individual on-site wastewater disposal systems in this state  
639 unless that person is currently certified by the department \* \* \*.  
640 A person who installs an individual on-site wastewater disposal



641 system on his own property as his primary residence is not  
642 considered an installer for purposes of this subsection. The  
643 requirements of this subsection shall not apply to professional  
644 engineers registered in the state.

645 (2) An installer of registered systems or products must be a  
646 factory-trained and authorized representative. The manufacturer  
647 must furnish documentation to the department certifying the  
648 satisfactory completion of factory training and the establishment  
649 of the installer as an authorized manufacturer's representative.

650 (3) The department shall issue a certification to an  
651 installer if the installer:

652 (a) Completes an application form that complies with  
653 this chapter and rules adopted under this chapter;

654 (b) Satisfactorily completes the training program  
655 provided by the department;

656 (c) Pays the annual certification fee; and

657 (d) Provides proof of having a performance bond or  
658 surety in effect with liability limits of at least Fifty Thousand  
659 Dollars (\$50,000.00) per occurrence and at least One Hundred  
660 Thousand Dollars (\$100,000.00) in total aggregate amount.

661 (4) Each installer shall furnish proof of certification to  
662 the property owner and to the department, \* \* \* if requested,  
663 before to the installation or repair of an individual on-site  
664 wastewater disposal system.

665 (5) The department shall provide for annual renewal of  
666 certifications.

667 (6) (a) An installer's certification may be suspended or  
668 revoked by the department after notice and hearing if the  
669 installer violates this chapter or any rule or regulation adopted  
670 under this chapter.

671 (b) The installer may appeal a suspension or revocation  
672 under this section as provided by law.



673 (7) The department semiannually shall disseminate to the  
674 public an official list of certified installers and provide to  
675 county health departments a monthly update of the list.

676 **SECTION 13.** The following provision shall be codified as  
677 Section 41-67-26, Mississippi Code of 1972:

678 41-67-26. (1) A person may not operate as a maintenance  
679 provider in this state unless that person is currently certified  
680 by the department.

681 (2) A maintenance provider for mechanical or proprietary  
682 systems must be a factory trained and authorized representative.  
683 The manufacturer must furnish documentation to the department  
684 certifying the satisfactory completion of factory training and the  
685 establishment of the maintenance provider as an authorized  
686 manufacturer's representative.

687 (3) The department shall issue a certification to a  
688 maintenance provider if the maintenance provider:

689 (a) Completes an application form that complies with  
690 this chapter and rules adopted under this chapter;

691 (b) Satisfactorily completes the maintenance provider  
692 training program provided by the department or currently holds a  
693 certified installer's certificate; and

694 (c) Pays the annual certification fee.

695 (4) Provides proof of having a performance bond or surety in  
696 effect with liability limits of at least Fifty Thousand Dollars  
697 (\$50,000.00) per occurrence and at least One Hundred Thousand  
698 Dollars (\$100,000.00) in total aggregate amount.

699 (5) Each maintenance provider shall furnish proof of  
700 certification to an individual prior to entering a contract with  
701 that individual for the continuing maintenance of an individual  
702 on-site wastewater disposal system.

703 (6) The department shall provide for annual renewal of  
704 certifications.



705 (7) The department semiannually shall disseminate to the  
706 public an official list of certified maintenance providers and  
707 provide to county health departments a monthly update of the list.

708 (8) A person may not be engaged in the business of removing  
709 and disposing of the sludge and liquid waste (septage) from  
710 individual on-site wastewater disposal systems in this state  
711 unless that person has a valid license issued by the department.

712 (9) The department shall issue a license to a pumper if the  
713 pumper:

714 (a) Completes an application form that complies with  
715 this chapter and rules adopted under this chapter;

716 (b) Satisfactorily complies with the requirements of  
717 his or her pumping and hauling equipment;

718 (c) Provides documentation of a disposal site approved  
719 by the Department of Environmental Quality, Office of Pollution  
720 Control;

721 (d) Pays the annual license fee; and

722 (e) Provides proof of having a performance bond or  
723 surety in effect with liability limits of at least Fifty Thousand  
724 Dollars (\$50,000.00) per occurrence and at least One Hundred  
725 Thousand Dollars (\$100,000.00) in total aggregate amount.

726 (10) Each pumper shall furnish proof of licensure to an  
727 individual before entering a contract with that individual for the  
728 removing and disposing of the sludge and liquid waste (septage)  
729 from an individual on-site wastewater disposal system.

730 (11) A septage pumper who shall show proof that he or she  
731 was in the septage business in Mississippi before July 1, 1987,  
732 shall be exempt from the license fee required by this section.

733 **SECTION 14.** Section 41-67-27, Mississippi Code of 1972, is  
734 reenacted and amended as follows:

735 41-67-27. It is unlawful for a manufacturer of an individual  
736 on-site wastewater disposal system or alternative treatment or  
737 disposal components to operate a business in or to do business in



738 the State of Mississippi without holding a valid registration  
739 issued by the department.

740 **SECTION 15.** Section 41-67-28, Mississippi Code of 1972, is  
741 reenacted and amended as follows:

742 41-67-28. (1) **Administrative enforcement of regulations.**

743 (a) Any person who knowingly violates this chapter  
744 shall be subject to administrative enforcement action by the  
745 department. Except for administrative action against a certified  
746 installer, maintenance provider or licensed pumper, the department  
747 shall provide the alleged violator thirty (30) days' notice of the  
748 violation and the appropriate action to be taken to come into  
749 compliance with this chapter or department regulations, rules or  
750 orders. If, after the thirty-day notification period, the alleged  
751 violator has not taken appropriate measures to come into  
752 compliance, the department may take administrative enforcement  
753 action against that person.

754 (b) If any certified installer or engineer files an  
755 affidavit with the department containing false or incorrect  
756 information that the installer or engineer knows to be false or  
757 incorrect, the board, after due notice and hearing, shall levy an  
758 administrative fine of up to Two Thousand Dollars (\$2,000.00).

759 (c) In circumstances where an alleged violation  
760 involves a malfunctioning system that could result or has resulted  
761 in a substantial endangerment to human health or the environment,  
762 including, but not limited to, a discharge of pollutants into the  
763 waters of the state, the department may institute an  
764 administrative proceeding as a complainant before the commission.  
765 Any action taken by the commission, and appeals thereof, shall  
766 proceed under Sections 49-17-31 through 49-17-43 and shall be  
767 either in addition to or in lieu of other remedies provided for  
768 the department in this chapter.

769 (d) The department may assess a penalty not to exceed  
770 One Hundred Dollars (\$100.00) for a violation of this chapter or



771 its implementing regulations, rules, orders or permits. Each day  
772 that a violation continues shall be considered a separate  
773 violation. All penalties collected by the board under this  
774 section shall be deposited in the State General Fund.

775 (e) In circumstances where the State Health Officer has  
776 determined that a health threat may be imminent, the department  
777 may require a water utility to discontinue service until the  
778 imminent health threat may be abated.

779 (2) **Criminal enforcement of regulations and orders.**

780 Except as otherwise provided in this chapter, any person  
781 who \* \* \* knowingly violates this chapter or any rule or  
782 regulation or written order of the board issued under this chapter  
783 is, upon conviction, guilty of a misdemeanor and shall be punished  
784 as provided in Section 41-3-59. The department may file an  
785 affidavit in any court of appropriate jurisdiction to prosecute  
786 violations of this chapter or its implementing regulations. If a  
787 malfunctioning system presents an immediate health hazard, an  
788 action for abatement may be filed in the circuit court for the  
789 county in which the property lies.

790 (3) **Civil suits.**

791 (a) In addition to the penalties provided in this  
792 section and any other available remedies, the department may seek  
793 mandatory or prohibitory injunctive relief to enforce this  
794 chapter, any regulation, or any order issued under this chapter in  
795 the chancery court for the county in which the property lies.

796 \* \* \*

797 (b) In addition to all other statutory and common law  
798 rights, remedies and defenses, any person who purchases an  
799 individual on-site wastewater disposal system and suffers any  
800 ascertainable loss of money or property, real or personal, may  
801 bring an action at law in the court having jurisdiction in the  
802 county where the installer or the manufacturer has the principal  
803 place of business, or where the act allegedly occurred, to recover





804 any loss of money or damages for the loss of any property  
805 resulting from: improper installation of a system due to faulty  
806 workmanship; failure of a system to operate properly due to  
807 noncompliance with manufacturer requirements or board regulations;  
808 and failure of a system to operate properly due to defective  
809 design or construction.

810           (c) A person who \* \* \* is aggrieved or damaged by a  
811 discharge caused by a violation of this chapter or its  
812 implementing regulations may sue the violator for the actual  
813 damages and additional punitive damages equal to a maximum of  
814 twenty-five percent (25%) of the actual damages proven by the  
815 aggrieved party, to be taxed by the court where the suit is heard  
816 on an original action, by appeal or otherwise and recovered by a  
817 suit at law in any court of competent jurisdiction. In addition,  
818 the court may award the prevailing party reasonable attorney's  
819 fees and court costs. Before filing suit, the party aggrieved or  
820 damaged must give thirty (30) days' written notice of its intent  
821 to file suit to the alleged violator.

822           **SECTION 16.** Section 41-67-29, Mississippi Code of 1972, is  
823 reenacted as follows:

824           41-67-29. Any person who is aggrieved by any final decision  
825 of the board may appeal that final decision to the chancery court  
826 of the county of the situs in whole or in part of the subject  
827 matter. The appellant shall give a cost bond with sufficient  
828 sureties, payable to the state in a sum to be fixed by the board  
829 or the court and to be filed with and approved by the clerk of the  
830 court. The aggrieved party may, within thirty (30) days following  
831 a final decision of the board, petition the chancery court for an  
832 appeal with supersedeas and the chancellor shall grant a hearing  
833 on the petition. Upon good cause shown the chancellor may grant  
834 the appeal with supersedeas. The appellant shall be required to  
835 post a bond with sufficient sureties according to law in an amount  
836 to be determined by the chancellor. The chancery court shall



837 always be deemed open for hearing of appeals and the chancellor  
838 may hear the appeal in termtime or in vacation at any place in his  
839 district. The appeal shall have precedence over all civil cases,  
840 except election contests. The chancery court shall review all  
841 questions of law and of fact and may enter a final order or remand  
842 the matter to the board for appropriate action as may be indicated  
843 or necessary under the circumstances. Appeals may be taken from  
844 the chancery court to the Supreme Court in the manner as now  
845 required by law, but if a supersedeas is desired by the party  
846 appealing to the chancery court, that party may apply therefor to  
847 the chancellor, who shall award a writ of supersedeas, without  
848 additional bond, if in the chancellor's judgment material damage  
849 is not likely to result. If material damage is likely to result,  
850 the chancellor shall require a supersedeas bond as deemed proper,  
851 which shall be liable to the state for any damage.

852 **SECTION 17.** Section 41-67-31, Mississippi Code of 1972, is  
853 amended as follows:

854 41-67-31. Sections 41-67-1 through 41-67-29 shall stand  
855 repealed on July 1, 2006.

856 **SECTION 18.** Sections 41-67-4, 41-67-6, 41-67-7, 41-67-8,  
857 41-67-16 and 41-67-21, Mississippi Code of 1972, which prescribe  
858 certain duties of the Department of Health relative to individual  
859 on-site wastewater system regulations, provide certain penalties  
860 for noncompliance, provide the determination of applicability of  
861 this act, require a study of on-site wastewater systems and  
862 provide for owner repair of malfunctioning systems, are repealed.

863 **SECTION 19.** This act shall take effect and be in force from  
864 and after June 30, 2002.

